

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA, and
COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Plaintiffs,

v.

TEMRAC COMPANY, INC.,

Defendant.

Civil Action No.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned Attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Commonwealth of Pennsylvania, Department of Environmental Protection ("PADEP"), allege as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 107(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 42 U.S.C. § 9607(a)(3), seeking reimbursement of response costs incurred and to be incurred by the United States and PADEP in response to the release or threat of release of hazardous substances at the Crossley Farms Superfund Site, in Berks County, Pennsylvania; and seeking an Order of the Court pursuant to the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. §§ 3301, *et seq.*, voiding a property transfer by the Defendant.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b).

3. Venue is proper in this judicial district pursuant to 42 U.S.C. § 9613(b), because the release or threat of release of hazardous substances occurred in this judicial district.

DEFENDANT

4. Defendant Temrac Company, Inc., (“Temrac”) was incorporated under the laws of the State of New Jersey. Temrac was formed to manufacture, conduct research and develop, market, purchase, sell and deal in hard and high temperature alloys, including rare elements, metals, and ceramics; and to fabricate the same into tools, dies, parts, and machines.

GENERAL ALLEGATIONS

History of the Site

5. The Site comprises approximately 209 acres in a rural area approximately seven miles southwest of Allentown, in the Huffs Church community of Hereford Township, Berks County, Pennsylvania.

6. The Site includes a dairy farm, a field utilized for growing corn and alfalfa, an abandoned quarry, a borrow pit area, and other small excavations.

7. Commencing in 1947, Harry G. Crossley and his brother John W. Crossley owned and jointly operated the Site as a dairy farm.

8. From approximately the mid-1960's to the mid-1970's, a local manufacturing plant owned by Bally Case and Cooler, Inc. (“Bally”) sent numerous 55-gallon steel drums containing industrial waste to the Site for disposal.

9. In response to complaints from local residents regarding an unusual odor in their private water supply wells, PADEP initiated a ground water sampling program at the Site in September 1983.

10. The sampling revealed contamination of the groundwater with trichloroethylene ("TCE") and tetrachloroethylene ("PCE"). TCE and PCE are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.

11. In December 1986, EPA initiated an emergency removal action at the Site in which bottled water was provided to residents affected by the contamination, and carbon filtration systems were installed at those residences where the drinking water wells were most severely impacted by the contamination. Thereafter, EPA continued maintenance of the carbon filtration systems, and ground water sampling activities.

12. On October 14, 1992, the Site was added to the National Priorities List, CERCLA Section 105, 42 U.S.C. § 9605.

13. On June 30, 1997, EPA issued a Record of Decision ("ROD"), selecting a permanent remedy for a portion of the Site known as Operable Unit I. The remedy chosen utilizes extraction wells and a "pump and treat" system to address groundwater contamination.

14. In 1998, EPA conducted a second removal action, in which it removed approximately 1,200 buried 55-gallon drums and 13,000 cubic yards of contaminated soil from the Site.

15. EPA initiated the remedial action for Operable Unit I in September 1999. The remedy chosen utilizes extraction wells and a "pump and treat" system to address groundwater contamination.

Defendant's Liability

16. Bally, to whom Temrac is the successor-in-interest, was formed in Delaware on September 21, 1967, for the manufacture, assembly, construction, sale, purchase and use of refrigerators, freezers, and commercial refrigeration products and related equipment of every kind.

17. As part of its manufacturing process, Bally utilized several degreasing solvents, including TCE and PCE.

18. Between the mid-1960s and the mid-1970s, Bally arranged to transport to the Site, and dispose of therein, numerous 55-gallon drums of waste resulting from its manufacturing processes, including PCE and TCE.

19. In 1972, Bally became a wholly-owned subsidiary of the Sunbeam Corporation.

20. In 1982, Sunbeam Corporation was merged into a wholly owned subsidiary of Allegheny International, Inc. ("Allegheny"), and Bally was merged into the Defendant Temrac, another subsidiary of Allegheny.

FIRST CLAIM FOR RELIEF

21. The foregoing Paragraphs are realleged and incorporated herein by reference.

22. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9602(21).

23. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) were disposed of by Defendant at the Site.

25. There has been a "release or threatened release," as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Site.

26. The Regional Administrator of EPA Region III, acting pursuant to his delegated authority, determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threatened release of hazardous substances at the Site.

27. The United States and PADEP have incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as a result of the release or threat of release of hazardous substances from the Site.

28. The United States' actions at the Site were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

29. The costs incurred by the United States and PADEP in conducting the response actions were incurred in a manner not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

30. Defendant is among the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Specifically, Defendant is a person who arranged for disposal of a hazardous substance within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3)

31. Defendant is jointly and severally liable to the United States and PADEP for the payment of response costs incurred by the United States and PADEP as a result of the response actions taken at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

SECOND CLAIM FOR RELIEF

32. The foregoing Paragraphs are re-alleged and incorporated herein by reference.

33. The United States and PADEP will continue to incur response costs in connection with the Site until the Site is cleaned up and all response costs are paid by responsible parties.

34. Defendant is subject to a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability for response costs or damages that will be binding on any subsequent actions to recover further response costs or damages.

THIRD CLAIM FOR RELIEF

35. The foregoing Paragraphs are realleged and incorporated herein by reference.

36. There was a “transfer” of real property by Defendant to the bankruptcy estate of Sunbeam Corporation, as defined by Sections 3301(6) and 3305(1)(A) of the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C. §§ 3301(6) and 3305(1)(A).

37. The transfer of property was a transfer to an “insider,” within the meaning of Section 3301(5) of the FDCPA, 28 U.S.C. § 3301(5).

38. Prior to the transfer of property, based on hazardous waste cleanup activities at the Site, Temrac had received notice of its potential liability and could anticipate being sued by EPA for response costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

39. Prior to the transfer of property, Temrac could foresee that it could incur debts beyond its ability to pay as a result of its liability for response costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

40. The transfer of property by Defendant was fraudulent as defined by Section 3304(b)(1)(A) of the FDCPA, 28 U.S.C. § 3304(b)(1)(A).

41. In addition, or alternatively, the transfer of property was fraudulent as defined by Section 3304(b)(1)(B) of the FDCPA, 28 U.S.C. § 3304(b)(1)(B).

42. Section 3306(a)(1) of the FDCPA, 28 U.S.C. § 3306(a)(1), authorizes the Court to void the property transfer to the extent necessary to satisfy the debt to the United States, and to order such other relief as may be appropriate, pursuant to 28 U.S.C. §§ 3306(a)(2) and 3306(a)(3).

PRAYER FOR RELIEF

WHEREFORE, the United States and PADEP request that this Court enter a judgment against the Defendant as follows:

A. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), ordering Defendant to pay all response costs incurred by the United States and PADEP in response to the release and threat of release of hazardous substances at the Site;

B. Entering a declaratory judgment of liability under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against the Defendant that will be binding on any subsequent action to recover further response costs or damages;

C. Voiding the aforementioned property transfer to the extent necessary to satisfy the debt to the United States pursuant to Section 3306(a)(1) of the FDCPA, 28 U.S.C. § 3306(a)(1),

and ordering such other relief as may be appropriate pursuant to 28 U.S.C. §§ 3306(a)(2) and 3306(a)(3);

D. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

RONALD J. TENPAS
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

ROBERT E. DEFEVRE,
Attorney
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 616-8860
Fax: (202) 616-6583

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

MICHAEL BLUME
Assistant United States Attorney
615 Chestnut Street
Philadelphia, PA 19106

MARTIN R. SIEGEL

Assistant Counsel

Pennsylvania Department of Environmental Protection

Southcentral Regional Office

909 Elmerton Avenue

Harrisburg, PA 17110-8200